

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0531

Sales and Use Taxes

Calendar Years 1996, 1997, and 1998

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ISSUE(S)

I. Tax Administration – Books and Records

Authority: IC 6-8.1-5-4

Taxpayer protests the assessments that were based upon best information available.

STATEMENT OF FACTS

Taxpayer, incorporated under the laws of Indiana in 1985, is a pizza restaurant. An audit was completed on June 25, 1999 based upon industry averages taken from Dun & Bradstreet's *Industry Norms & Key Business Ratios*, Desk-Top Edition 1998-1999. The industry average net sales were reduced by taxable sales reported by the taxpayer on its ST-103H's. The difference was assessed as unreported taxable sales. No credit was given for exempt sales because no exemption certificates were made available.

Tangible personal property stored, used or consumed in Indiana is subject to Indiana use tax if sales tax was not paid at the point of purchase. Taxpayer did not furnish invoices for audit examination. Industry averages for eating places (SIC5812) show both a gross profit and a net profit after tax. The difference in these two figures is taxpayer's non-inventory expenses. The auditor determined to assess use tax on ten percent (10%) of the total expenses since these figures include taxes and wages as well as consumables.

Indiana Code 6-8.1-4-2(a)(6) allows Audit to utilize projections and estimates in the absence of actual data. At this date, no additional data has been provided to the hearing officer.

On June 12, 2001 a hearing was held.

At hearing, taxpayer provided photographs of his burned building and a newspaper article for

verification. Taxpayer has not provided additional evidence that the proposed assessment is in error.

I. **Tax Administration** – Books and Records

DISCUSSION

At issue is whether the taxpayer's best information audit should be adjusted.

At hearing, taxpayer stated it had a fire in December 2000 and was not fully covered with insurance. Further, the assessment is too high. Menu prices indicate prices from \$.50 to \$5.95 but the Department has not been provided records for the volume of business. Taxpayer states that he would try to get additional information. At the date of this writing, no further information has been provided.

FINDING

Taxpayer's protest is denied.